Supreme Court, U.S.
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NO. 9262

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

ROBERT "C.O." CHINN,

Petitioner

versus

TERRY A. McFARLAND,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT

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July 15, 1992

BEST AVAILABLE COPY

QUESTIONS PRESENTED

1. Whether the Fifth Circuit Court of Appeals decision is in conflict with Mireles v. Waco; _____ U.S. _____, 112 S.Ct. 286, 116 L.Ed.2d 9 (1991).

LIST OF PARTIES TO PROCEEDING

Robert "C.O." Chinn is the Petitioner.

Terry A. McFarland is Respondent.

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STATEMENT OF THE CASE

Statement of the Facts

Respondent, Terry A. McFarland, is presently employed as a Sergeant in the Mississippi Highway Safety Patrol, a law enforcement agency of the State of Mississippi. At all times relevant to this controversy, McFarland was acting in his capacity as a duly sworn officer of the Mississippi Highway Safety Patrol (Vol. I, Page 2). Petitioner, Robert "C.O." Chinn, is a duly elected Justice Court Judge of Madison County, Mississippi.

On or about Friday, April 6, 1990, at approximately 3:00 o'clock p.m., Terry McFarland, while acting in his official capacity as an officer with Mississippi Highway Safety Patrol (MHSP), was present in the Clerk's office of the Madison County Justice Court building to check the status

of several traffic tickets involving a juvenile offender, when Judge Chinn came up and questioned the Clerk as to what she was doing. The Clerk replied that she was checking the drivers license history for Officer McFarland and asked if there were any problems with the tickets. After some conversation, Judge Chinn ordered Officer McFarland to leave the building, but he refused. He was then advised that if he did not leave as ordered, he would be charged with contempt of court and arrested. (Vol. I, Pages 3, 54-55).

Officer McFarland left and went outside the building for a short time. He later returned and was in a public area when Judge Chinn asked a clerk to follow him into the courtroom where he dictated and signed a combination affidavit/warrant for the arrest

of Officer McFarland for contempt of court. (Vol. I, Page 55).

At the time Judge Chinn dictated and signed a combination affidavit/warrant for the arrest of Officer McFarland, McFarland had no case then pending before the court and court was not properly convened or in session at the time. The earlier discussion between Judge Chinn and McFarland occurred in the Clerk's office, not in the courtroom. (Vol. I, Page 55).

Officer McFarland was placed under arrest, escorted from the building by law enforcement officers, and transported to the Madison County Jail where he was booked into the jail docket on a charge of contempt of court. Subsequent to his being taken to the Madison County Jail, McFarland posted a bond and was released on his own recognizance. (Vol. I, Page 4).

On April 11, 1990, Judge Nancy Isonhood, after hearing evidence on the criminal contempt charge against Officer McFarland, dismissed the charges, ruling that the incident in question did not occur in a judicial forum. (Vol. I, Page 52).

Section 45-3-21 Mississippi Code Annotated (Supp. 1990), gives Mississippi Highway Safety Patrolmen, such as McFarland, the powers and imposes upon them a duty to enforce all traffic laws, rules and regulations of the State of Mississippi upon all highways of the State Highway Systems and the right-of-ways of such highways.

Whenever any patrolmen shall prefer any traffic charge whatsoever against any person in any court, Section 45-3-25 Mississippi Code Annotated (1972), as amended, imposes a duty upon such a patrolman, to mail two copies of the abstract of the court record

immediately to the Commissioner of Public Safety at Jackson, Mississippi, upon the termination of such proceeding, showing the nature of the charge preferred, the date of the trial upon such charge, the disposition of the matter by the court, and the sentence, if any, imposed by the court.

Mississippi Justice Court Judges, pursuant to Mississippi Code Ann. Section 9-11-15 (1990 Supp.), are required to hold regular terms of court, at such times as they may appoint, not exceeding two and not less than one term each month, at the appropriate Justice Court courtroom established by the County Board of Supervisors (the governing body of the County); and they may continue to hold court from day to day so long as business may require. All process shall be returnable, and all trials shall take place at such

regular terms, except as otherwise provided. Where the defendant is a non-resident or transient person, it shall be lawful for the Judge to have the parties brought before him at any reasonable time and hear the evidence and give judgment, where it shall be shown by the oath of either party that a delay of the trial until the regular term will be of material injury to him. Such a court shall be a court of record, with all power incident to a court of record, including the power to impose fine and imprisonment in such amount or length as is authorized by law.

Question One

CERTIORARI SHOULD BE DENIED AS THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT IS NOT IN CONFLICT WITH THE DECISION OF ANOTHER UNITED STATES COURT OF APPEALS OR WITH APPLICABLE DECISIONS OF THE UNITED STATES SUPREME COURT.

Petitioner, Robert "C.O." Chinn requests this Court to grant certiorari to determine whether his actions, while claiming to act in his capacity as a Justice of the Peace in issuing an arrest warrant, is a "judicial act" for purposes of his immunity defense.

While Petitioner failed to cite or argue Mireles v. Waco, _____ U.S. _____, 112 S.Ct. 286, 116 L.Ed.2d 9(1991) in his original brief filed with the Fifth Circuit, he now contends that the Court of Appeals panel, which cited Mireles in its opinion, erred in concluding that his act of holding McFarland for contempt of court was

insufficiently judicial to warrant the protection of absolute immunity.

This Court in Mireles set out two sets of circumstances where judicial immunity is overcome.

> First, a Judge is not immune from liability from non-judicial actions, i.e., actions not taken in the Judge's judicial capacity. Second, a Judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.

112 S.Ct. 288 [quoting Forrester v. White, 484 U.S. at 227-229, 108 S.Ct. at 544-545, 98 L.Ed.2d 555(1988); Stump v. Sparkman, 435 U.S. at 360, 98 S.Ct. at 1106, 55 L.Ed.2d 331(1978); Bradley v. Fisher, 13 Wall. at 351] In determining whether the act is a judicial one for the purposes of immunity, this Court stated:

> Whether an act by a Judge is a 'judicial' one relate[s] to the nature of the act itself, i.e. whether it is a function normally

> performed by a Judge, and to the expectations of the parties, i.e. whether they dealt with the Judge in his judicial capacity.

112 S.Ct. at 228, citing Stump v. Sparkman, 435 U.S., at 362, 98 S.Ct. at 1108, 55 L.Ed.2d 331(1978); Forrester v. White, 484 U.S., at 227-229, 108 S.Ct., at 544-545, 98 L.Ed.2d 555(1988). (Emphasis Added)

This Court, in Mireles, found that Judge Mireles' actions, even if he acted in excess of his authority, were taken in the aid of his jurisdiction over a matter before him and could not be said to have been taken in the absence of jurisdiction. 112 S.Ct. at 289. In the case, sub judice, Judge Chinn undeniably had statutory authority to issue an arrest warrant and to punish for contempt of court, if such act was committed in a judicial role or taken in the aid of his jurisdiction over a matter before him.

However, as the Court of Appeals panel correctly pointed out, the incident leading to Sergeant McFarland's arrest did not occur in Judge Chinn's chambers or courtroom and Sergeant McFarland was in the Clerk's office carrying out his normal duties. The incident did not arise from a visit to the Judge, as Sergeant McFarland had no business before Judge Chinn and did not seek him out. (Slip op. at page 6.) These facts, which the panel considered, clearly reflect that McFarland did not come to the Justice Court building to deal with or see Judge Chinn in his judicial capacity.

Unlike Judge Mireles, Judge Chinn was not acting in the aid of his jurisdiction over a matter before him and the Court of Appeals in applying these facts, correctly found that Judge Chinn's judicial immunity defense was without merit.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Respondent, Terry McFarland, respectfully requests that this Court deny Petitioner's Writ of Certiorari, and affirm the Judgment of the Court of Appeals.

Dated this 15th day of July, 1992.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, James H. Herring, Attorney for Respondent, do hereby certify that I have this day mailed by U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing Brief for Respondent to James W. Craig, Esq., 206 W. Pearl Street, Suite 808, Jackson, MS 39201; and to Isaac K. Byrd, Jr., Esq., 427 E. Fortification, Jackson, MS 39202.

SO CERTIFIED this the 16 day of July, 1992.

JAMES H. HERRING